

THE NORFOLK ISLAND NEWS

**Special Supplement
to the April Issue**

FREE

APRIL 7th 1976

MR. HAMPSON PROPOSES SHEEPING CHANGES FOR NORFOLK — AS A TERRITORY

MR. HAMPSON'S CONCLUSIONS IN BRIEF

INTERESTS OF RESIDENTS:

"...we submit it is possible for Your Honour to find that residents generally believe it is in their interests that the way of life on Norfolk Island be maintained and that the Island's environment be preserved."

HISTORICAL RIGHTS: "We submit that the evidence discloses a historical right of the Pitcairners to live on Norfolk Island." -- and the right to exclude others from living on Norfolk Island is "a necessary correlative of the historical right to live on Norfolk..."

CONSTITUTIONAL POSITION: "Norfolk Island is correctly described in law as a 'territory under the authority of Australia'..." "the sole power to make laws for the government of Norfolk Island rests with the Parliament of the Commonwealth of Australia..."

AUSTRALIAN SOCIAL BENEFITS: "...maintain the existing system"

CAPACITY AND WILLINGNESS TO PAY AUSTRALIAN TAXES: "...the Island does not have the capacity... the Island is not willing..."

TAX HAVEN: "It has been used to a significant extent."

IMMIGRATION: "Nobody doubts the right of Norfolk Island people to

regulate the growth of tourism and immigration."

COMMUNICATIONS: "Qantas does not want the service."

POLICE, JUDICIARY: "Most people seem satisfied with the present system."

MAIN RECOMMENDATIONS:

- "Independence is impracticable"
- "The desire of the majority is to maintain a strong link with Australia, but to have a much greater say in their own affairs."
- "Norfolk Island Council should be given all governmental powers that apply to any geographical part of a State of Australia. These should be handed over over a five-year period."
- There should be "a Representative for Norfolk Island in the House of Representatives...entitled to speak on any measure but to vote only on a bill intended to apply to Norfolk ... salary and expenses paid by Australia."
- An Administrator, as Head of the public service but not a member of Council, for five years -- after that, he would be appointed by the Council.
- Immediate Council powers over licensing, town planning, road-works "and so on"; powers over police, forestry, education, hospital, land titles and companies office progressively, over five years.

FAR-REACHING recommendations for Norfolk Island's future government are made by Mr. Cedric Hampson Q.C. in his summing-up address to the Royal Commission.

He believes Norfolk is and ought to remain an Australian territory -- but that the Island ought to get far greater local self-government power.

He also believes Norfolk should have its own elected Member in the Australian House of Representatives.

Here are highlights from his address, organised in keeping with the Terms of Reference given for the Royal Commission;

Preserving Norfolk

Mr. Hampson believes there is a wide range of opinions about the real interests of Island residents, but that in general "...the most predominant interest of Norfolk Island residents lies in preserving Norfolk Island in a physical and aesthetic sense while having proper services for the residents and in adapting the future economy to harmonize with the preservation of the Island."

The Right to Live Here

In dealing with the item of the terms of reference "The Historical Rights of the Descendants of the Pitcairn Settlers, Arising from their Settlement in 1856", Mr. Hampson says: "The historical rights of the Pitcairn descendants that were asserted by various witnesses in the hearings were these:

1. Ownership of Norfolk Island.
2. Self-government.
3. Freedom from taxation.
4. Free burial.
5. Grazing commons.
6. Right to live on Norfolk Island.
7. Right to exclude others from liv-

ing on Norfolk Island.

8. Maintenance of own language and life-style."

Mr. Hampson concludes that any belief that Norfolk Island was actually ceded to the Pitcairners certainly does not stand up from an examination of the historical records. He says:

"It is easy to believe that the simple Pitcairn community could have misunderstood the intention of the Imperial Government regarding their re-settlement on Norfolk Island. As it appears that Acting Lt. Gregory was instructed to press the reluctant minority into leaving Pitcairn Island with the majority it is quite possible that he made promises to them beyond his authority."

On the possible historical right of the Pitcairners to have self-government on Norfolk Island, Mr. Hampson concludes:

"We submit that there is no evidence of a historical right of self-government."

On a claimed historical right to freedom from taxation, Mr. Hampson concludes:

"We submit that the evidence does not establish any historical right arising from the settlement in 1856 that the residents in Norfolk Island should be free from taxation."

On the right of free burial, Mr. Hampson says:

"It is not a legal right but it is a custom which exists and which will probably continue to exist."

As to the right to grazing commons, he says:

"Again, it was only a custom... there seems no reason why this custom should not continue."

On the subject of the right to live on Norfolk Island, Mr. Hampson says:

"We submit that this is the most important right of the people of Pitcairn descent. It is submitted that what the Imperial Government offered to the inhabitants of Pitcairn was the right to live upon Norfolk Island. It must be remembered that the Pitcairners were in very straitened circumstances, having out-grown the resources of Pitcairn Island. The Imperial Government, which really had no responsibility for the Pitcairners, was not illiberal in re-settling them in Norfolk Island without making promises of self-government or of ownership of the Island. Many people gave evidence of their belief that the Queen has given Norfolk Island to the Pitcairners. Their ancestors had the same belief. From this belief they deduced rights of ownership, self-government and so on. In our submission the Queen gave them Nor-

folk Island in the sense that they were given the right to live there. We submit that the evidence discloses a historical right of the Pitcairners to live on Norfolk Island."

He goes on to say that the right to exclude others from living on Norfolk Island is - "a necessary correlative of the historical right to live on Norfolk Island".

Mr. Hampson continues:

"Bearing in mind the small size of the Island and its limited resources, it must become increasingly difficult to allow outsiders to come to reside on Norfolk Island if the Pitcairn descendants are to maintain their right to live on Norfolk Island. This reasoning has been recognized over the years and the first migration ordinance became law in 1922."

Aust. Has Sole Control

Mr. Hampson deals at great length with the question of "Norfolk Island's Legal Position as a Territory of Australia". His comments on this subject begin on page 44 and continue through page 62. Among his own conclusions are these:

- The Queen in Council no longer has any power with relation to Norfolk Island, it is submitted, because any derogative power was exhausted by the Order in Council of 1914, if not before; and any power given by the 1855 Statute was likewise exhausted by the same Order in Council.

- The true position seems, in summary, to be that Norfolk Island is correctly described in law as a "territory under the authority of Australia" and that it is probably not unreasonable to refer to Norfolk Island as a "territory of Australia".

- The sole power to make laws for the government of Norfolk Island rests with the Parliament of the Commonwealth of Australia.

- This power is not restricted as to subject matter and it is not subject legally to any requirement that the laws made under it must be for the good of the Island; the only restriction to the power is to be found elsewhere in the Commonwealth Constitution.

Economy: Tourism

On guideline (d), "The Present and Probable Development of the Economy of Norfolk Island", Mr. Hampson draws few conclusions of his own. He reviews the many industries that have been attempted on Norfolk and that have failed and says: "It now seems to be common

ground that the probable development of the economy of Norfolk Island will be based mainly on tourism." He mentions Mr. N.H. McIntyre's belief in "Company activity" as a helpful section of the Island's economy and Mr. McIntyre's belief that "tourism cannot be regarded as a basic industry". Mr. Hampson cites the testimony given by the Accommodation Proprietors' Association, Mrs. Eileen Dickson, Dave South, Bernie Christian-Bailey and others, and devotes several pages to quoting from Richard Bataille's support of the Quarantine Station.

More than 20 pages of Mr. Hampson's address deal with the guideline "Whether Social Security, Health, Educational, Compensation and Other Benefits should be provided at a level similar to those which other Australian citizens enjoy".

Mr. Hampson reproduces extensive sections of earlier transcript evidence concerning the Hospital, the Wives & Mothers Club, the Country Women's Association, the Sunshine Club, the Lions Club, the Red Cross, the Commonwealth Department of Health, Ian McCowan, Mr. W.D. Hood of the Australian

ABOUT THIS SPECIAL NEWS SUPPLEMENT

MR. HAMPSON'S ADDRESS to Sir John Nimmo is about 160 pages in length. There are only two copies on Norfolk -- one at the Admin and one at the Library.

Anyone on Norfolk who wants to comment to Sir John about Mr. Hampson's address is invited to do so. The deadline isn't clear, but comments probably have to reach Canberra within two or three weeks.

This Supplement is the News's attempt to summarise Mr. Hampson's views and circulate them at once, so residents can react if they want to. The Admin does not plan to make any copies of the full text; and as it is covered by Crown Copyright no one else may copy it at length without specific, written permission from the Commonwealth Government.

If you are troubled by something in this News summary, get to the Library and read the original text. Send your comments direct to Sir John, or to the Admin for forwarding.

Incidentally, the Supplement is free because anyone who has bought the April News is entitled to one - and we don't know who all that includes.

Department of Education and Mr. Brian Nunn. "The material is all before Your Honour," Mr. Hampson says, "and it is for Your Honour to decide between the conflicting opinions. The only submission we wish to make is to remind Your Honour of the evidence that sudden change seems historically to have been resisted by the Islanders. Is there sufficient reason then to change the system which seems to have worked well enough and to have had their support for many years past? Is the best solution not to main the existing system and to effect improvements within it rather than to replace it with a new system?"

Unable to Pay Tax

When it comes to the guideline "The capacity and willingness of the Island to pay taxation or other imposts for the provision of those benefits", Mr. Hampson has no doubt as to the majority opinion expressed in evidence at Commission hearings. He concludes: "It is more likely than not that the Island does not have the capacity to pay in full for the provision of the benefits referred to."

- and Unwilling to Pay

As to the Island's willingness to pay taxes, he says: "It is a human characteristic that while a citizen demands services from Government he is never happy to an obvious degree in paying the taxes which will be used to provide those services. The Norfolk Islander is very human in this regard. Some people said they were willing to pay taxes to obtain benefits on the Australian model. Most want no part of taxation of any kind although some conceded they would not object to taxes levied by Norfolk Island Council. As an assessment of willingness can only be based upon what people say, this is probably one area in which Your Honour can safely count heads. In our submission the majority opinion is clear; the Island is not willing to pay through taxation or other imposts for the provision of benefits referred to."

Tax Haven

His summary on this topic is: "Your Honour is asked to report on the extent to which Norfolk Island 'has been and is now being used'. In our submission it is only possible to answer this by saying 'it has been used to a significant extent' or by using some other form of words. It is impossible to discover how much Australian income tax was in fact

avoided even in approximate terms. ...in view of the time spent by Tax Department officers with comparatively little success, it seems clear that it would take literally many years before any estimate of reasonable accuracy could be attempted."

Must Control Migration

On "Conditions for permanent entry into the island community" Mr. Hampson says "Tourism and population have to be carefully watched and clear guidelines and principles upon which immigration and entry into the population will be allowed must be laid down. Nobody doubts the right of Norfolk Island people to regulate the growth of tourism and immigration to the island. At the same time nobody doubts the desire to preserve the quaintness, the peacefulness and the beauty of the island... plainly, immigration must be controlled in the context of an over-all plan."

Qantas Wants Out

Most of Mr. Hampson's comments on the guideline "The need for adequate communications between the island and the rest of the world" give the impression that communications on the whole are adequate -- except for air transport. Here is what Mr. Hampson says about airline services:

"The civil aviation authorities should make a decision and recommendation as soon as possible. Qantas does not want the service and it seems unfair to hold them to the provision of a service when it is incurring a loss of \$750,000 per annum, which seemed to have been established on the evidence."

"Qantas has operated DC.4 aircraft to Norfolk Island since June 1949. The aircraft are now obsolete and expensive to maintain. Since July 1974 Qantas has been asking to be relieved of the service but it was asked to continue the service until the airport facilities were improved and thus more sophisticated aircraft could be used on the route. Qantas has lost the sum of \$4,600,000 over the last five years, and it is no longer interested in maintaining the service. It applied for a subsidy of \$760,000 p.a. to compensate it for having to run the service and even if the airport was updated so as to accommodate jet aircraft such as the Boeing 707, Qantas would not be interested in maintaining the service. It is streamlining its fleet to 747-type aircraft and would

not want to keep 707s in service just for the Norfolk Island run. It is plain therefore that some other airline operator has to be given the opportunity to run the service. Some people enjoy the plane trip in the old DC.4 aircraft but the time has come for those aircraft to be replaced."

Police and Courts O.K.

"Need for adequate law enforcement and judicial machinery" is quite brief. He sums his views up by saying "Most people on the island seem satisfied with the present system. No good reason suggests itself to change it in the foreseeable future."

Main Recommendations

Mr. Hampson's main conclusions on the entire Royal Commission evidence and his recommendations to Sir John Nimmo are these:

- "We submit that the concept of complete independence for Norfolk Island is impracticable and indeed its proponents were continually obliged to fall back upon the notion that Australia would be responsible for all those matters for which Norfolk Island, because of its size, small population and remoteness, could not itself be responsible. It seems an odd sort of independence which must be permanently propped up by Big Brother."

- "It is our submission that the majority of Norfolk Islanders do not wish to go to the extreme of complete integration into Australia on the one hand or to the extreme of complete independence on the other. We believe that the desire of the majority is to maintain a strong link with Australia, but to have a much greater say in their own affairs. For this reason we would submit that the future status of Norfolk Island and its constitutional relationship with Australia remain as it presently is but say that far greater responsibility and government should go to Norfolk Island. We submit Norfolk Island has far too long been governed administratively in all respects from the Australian mainland pursuant to laws made by a Parliament in whose composition they have no voice."

- "It appears to us that if the majority of Norfolk Islanders want to be left alone as much as possible, there is no good reason why Australia should not leave them alone as much as possible."

- "We submit that the future economy of Norfolk Island will be based on the tourist industry, but this industry

need to be supported by a strong second industry. The most obvious second industry, indeed the only one serious industry, is for Norfolk Island to support the proposed High-Security Animal Health Station."

● "If our submission regarding the future economy of Norfolk Island is correct, it follows that the social problems of the island will be comparatively simple and there is no reason to believe that in time the Norfolk Island Council would be unable to exercise all the legislative powers which are presently exercised in respect of any geographic part of a State of Australia by the local authority for that part and by the Parliament of that State." Mr. Hampson goes on to say he feels it is a great pity that the 1960 legislative powers offered to Norfolk Island Council were not somehow put into effect through compromise.

● "We submit that it would be wrong to expect the Norfolk Island Council immediately to undertake the exercise of the powers which would ultimately be given it. We believe that it is only sensible that a start is made with some powers. ... in relation to the powers which, we submit, the Council should immediately exercise, the Council should be funded by part of the Norfolk Island revenue, say, the profits from the sale of stamps and the profit from the Bond store. If this was insufficient revenue, the Council could raise its own. Other revenue, say from customs and lighterage, should be attributed temporarily to the administration of those areas which are not immediately given to the Council as its responsibility. As the administration or public service of Norfolk Island is one and as a number of its members fill more than one function it is appreciated that there will be some difficulty in the temporary division of powers. We do not believe it would be great and could be resolved by leaving the administration temporarily under the control of the Administrator except for any officer whose entire scope of duties falls within the area of Council powers... the Administrator and Administration would be executing all laws whether passed by the Council or made by Australia. We would envisage a five-year plan at the end of which all the powers to which we have referred would be reposed to the Council."

● "At the end of five years, it will be necessary that Norfolk Island remain subject to such laws of the Commonwealth Parliament as are intended to apply to Norfolk Island.

The type of law which we have in mind is the Federal law which applies universally in each State and not the Federal law which applies to a Territory. In other words, laws relating to currency, banking, marriage, divorce and matrimonial causes, bankruptcy, air and sea navigation, foreign affairs and so on, would apply on Norfolk Island as much as they would apply to any of the Australian States."

Member for Norfolk

● "No matter how diligent and keen any officers of an Australian Department in Canberra are in the protection of Norfolk Island interests, it appear to us that, having regard to the realities of the Federal administrative system, such officers will not be Departmental Heads or, if they are Departmental Heads, will have many other concerns than for Norfolk Island. Even if there is a Departmental Head for Norfolk Island, we can see that often legislative matters will be proposed and passed by the Commonwealth Parliament as a result of initiatives taken by other Departments, perhaps entirely without the knowledge of the hypothetical Departmental Head of Norfolk Island. The reality of the situation is that many Acts would be passed without Norfolk Island even being considered, just as in the past many Acts have been passed without Norfolk Island having been thought of... in our submission the sensible solution to the problem of consultation is for the Commonwealth Parliament... to provide for a Representative for Norfolk Island in the House of Representatives where most legislation originates. It is conceived that the Representative for Norfolk Island would be entitled to speak on any measure but to vote only on a bill which was intended to apply in Norfolk Island. It is our submission that only in this way will the Parliament be able continuously to be informed of the Norfolk Island point of view. The salary and expenses of the Representative should be borne by Australia. There is no reason why such representation should be delayed until the expiration of five years."

● "At the expiration of five years, Australia's official presence on Norfolk Island could well be a person designated the Commonwealth Agent or something of that kind. It is envisaged that he would act as a liaison officer between the Norfolk Island Council and the Norfolk Island Administration and the Australian administration. He would be within

the Department of some Minister of Canberra but he would be able to contact other Australian Departments directly."

● "During the operation of the five-year plan, it will be necessary to have an Administrator, however called, for Norfolk Island to remain as Head of the Administration. He should not be a member of the Council at all. As Head of the Administration, he will, as we have submitted, cause to be carried out whatever laws the Council makes within the powers it then has and also the Ordinances which are made by the Governor in Council with the advice of the Norfolk Island Council in relation to the powers not yet given to the Council. At the end of five years he will no longer be appointed by Australia but will be appointed by the Council as the Head of Norfolk Island and public service."

Powers to Council

● "The Norfolk Island Council immediately should be given the powers similar to those given to the local authority for a small town in Australia, that is to say matters of licensing, town planning, roadworks and so on. The powers which should probably be retained for up to five years should be police, forestry, education, hospital, land titles and companies office. There is no need that all these powers be retained for five years, but they could progressively be given over to the Norfolk Island Council. It is considered that at the end of five years there is no real reason why the police power should not be put under the Norfolk Island Council even though the police are recruited from Australia. They will retain their links with the Australian police forces, State and Federal."

● "We realise that the submissions we have made fall between the desire of some islanders for complete independence and of others for complete integration with Australia, but we believe they have majority support. There is an unfortunate history on Norfolk Island of opposition to a large proposal because it contains one point disliked by one group and another point disliked by another group and so on. The large proposal is defeated by the combination of opponents, whose opposition is only to a narrow part of the proposal... we believe it is in the best interest of real Norfolk Islanders that an acceptable compromise be reached on its relationship with Australia for the future."